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HOUSE BILL 873

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

EDDIE CORLEY

AN ACT

**RELATING TO EDUCATION; PROVIDING FOR BACKGROUND CHECKS; MAKING
AN APPROPRIATION; DECLARING AN EMERGENCY.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. SHORT TITLE. --This act may be cited as the
"Educator Background Check Act".**

**Section 2. DEFINITIONS. --As used in the Educator
Background Check Act:**

**A. "applicant" means a person who has applied to a
school district for employment or to volunteer service to
provide child care, including bus drivers and bus contractors
and their assistants, and a person who has applied to the state
board for certification;**

**B. "child care" means the provision of care,
treatment, education, training, instruction, supervision,**

1 transportation or recreation to minors;

2 C. "department of education" means the state
3 department of public education;

4 D. "employee" means a person who is employed or
5 performs volunteer work regularly for a school district;

6 E. "federal bureau of investigation record" means a
7 listing of certain information taken from fingerprint cards
8 submitted to and retained by the federal bureau of investigation
9 that includes the date of arrest, the arrest charge and the
10 disposition of the arrest;

11 F. "local school board" means the governing body of
12 a school district;

13 G. "state board" means the state board of education;
14 and

15 H. "volunteer" means a person volunteering child
16 care services regularly to a local school board.

17 Section 3. BACKGROUND CHECKS--APPLICANTS. --

18 A. An applicant shall provide the following to the
19 department of education:

20 (1) a fingerprint card, completed by a criminal
21 justice agency, bearing the fingerprints of the applicant;

22 (2) a written consent authorizing the release
23 of criminal history background information signed by the
24 applicant;

25 (3) the name, address, date of birth, race, sex

1 and social security number of the applicant; and

2 (4) a statement that the applicant has not been
3 convicted of a crime; however, if the applicant has been
4 convicted of a crime, the applicant shall provide a written
5 description of the crime and the particulars of the conviction.

6 B. The applicant shall pay for the cost of obtaining
7 the federal bureau of investigation record.

8 C. The department of education shall review the
9 federal bureau of investigation record and determine whether the
10 applicant has been convicted of rape, statutory rape, child
11 abuse or child sexual abuse and shall report its findings to
12 either the state board or to the local school board so that the
13 application for certification or for employment will be denied.

14 Section 4. BACKGROUND CHECKS--EMPLOYEES--VOLUNTEERS. --

15 A. Prior to renewing an employment contract with a
16 school district, an employee shall, or prior to resuming
17 volunteer child care services, a volunteer shall, provide to the
18 department of education:

19 (1) a fingerprint card, completed by a criminal
20 justice agency, bearing the fingerprints of the employee or
21 volunteer;

22 (2) a written consent authorizing the release
23 of criminal history background information signed by the
24 employee or volunteer;

25 (3) the name, address, date of birth, race, sex

Underscored material = new
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1 and social security number of the employee or volunteer; and

2 (4) a statement that the employee or volunteer
3 has not been convicted of a crime; however, if the employee or
4 volunteer has been convicted of a crime, the employee or
5 volunteer shall provide a written description of the crime and
6 the particulars of the conviction.

7 B. The employee or volunteer shall pay for the cost
8 of obtaining the federal bureau of investigation record.

9 C. The department of education shall review the
10 federal bureau of investigation record and determine whether the
11 employee or volunteer has been convicted of rape, statutory
12 rape, child abuse or child sexual abuse and shall report its
13 findings to the local school board so that the employment
14 contract is not renewed, the certificate is revoked or suspended
15 or the volunteer child care service is not resumed.

16 D. An employee shall submit to the federal bureau of
17 investigation's fingerprint background check every four years
18 from the first time he underwent the background check.

19 Section 5. NOTICE. --The department of education shall
20 provide:

21 A. notice to the applicant, current employee or
22 volunteer that a background check may be requested; and

23 B. notice to the applicant, current employee or
24 volunteer who is the subject of the background check of the
25 right to obtain a copy of the background check report, to

1 challenge the accuracy and completeness of information contained
2 in the report and to obtain a prompt verification as to the
3 validity of the challenge from the entity creating the report
4 prior to the final determination to retain, hire for employment
5 or accept for volunteer service is made by the superintendent of
6 public instruction or the school district.

7 Section 6. CONFIDENTIALITY. --

8 A. All criminal information received by the
9 department of education, the state board or the local school
10 board shall be confidential and not further disclosed or made
11 available for public inspection.

12 B. Without additional public disclosure, the
13 following actions shall not be construed to violate this
14 section:

15 (1) showing the criminal history background
16 information report to the applicant, employee or volunteer to
17 give him the opportunity to challenge the report; or

18 (2) releasing the report to a court of
19 competent jurisdiction in the event of litigation involving the
20 employment or volunteer service of the applicant, employee or
21 volunteer.

22 C. A person who violates the provisions of
23 Subsection A of this section is guilty of a misdemeanor and upon
24 conviction shall be sentenced pursuant to the provisions of
25 Section 31-19-1 NMSA 1978.

State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 10, 1997

Mr. Speaker:

Your EDUCATION COMMITTEE, to whom has been referred

HOUSE BILL 873

has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:

1. On page 1, line 12, strike "AN APPROPRIATION" and insert
in lieu thereof "APPROPRIATIONS".

2. On page 1, line 21, after "drivers" insert ", their
assistants".

3. On page 1, line 21, strike the second occurrence of
"bus".

4. On page 1, line 22, strike "and their assistants".

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FIRST SESSION, 1997

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5. On page 2, line 20, strike "a" and insert in lieu thereof "two".

6. On page 2, line 20, strike "card" and insert in lieu thereof "cards".

7. On page 3, lines 10 and 11, strike "rape, statutory rape, child abuse or child sexual abuse" and insert in lieu thereof "criminal sexual penetration pursuant to Section 30-9-11 NMSA 1978, abuse of a child pursuant to Subsection C of Section 30-6-1 NMSA 1978 and sexual contact of a minor pursuant to Section 30-9-13 NMSA 1978".

8. On page 3, line 13, strike "will" and insert in lieu thereof "shall".

9. On page 4, lines 11 and 12, strike "rape, statutory rape, child abuse or child sexual abuse" and insert in lieu thereof "criminal sexual penetration pursuant to Section 30-9-11 NMSA 1978, abuse of a child pursuant to Subsection C of Section 30-6-1 NMSA 1978 and sexual contact of a minor pursuant to Section 30-9-13 NMSA 1978".

10. On page 4, line 14, strike "is not" and insert in lieu thereof "shall not be".

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11. On page 4, lines 17 and 18, strike "every four years from the first time he underwent the background check" and insert in lieu thereof "on the effective date of the Educator Background Check Act at the time his employment contract is renewed. A certified employee shall submit to subsequent background checks each time his certificate is renewed and a noncertified employee shall submit to a subsequent background check at least every nine years and no more often than six years as determined by each local school board."

12. On page 5, line 6, after "district" insert "or prior to the final determination by the state board to deny, suspend or revoke certification".

13. On page 5, after line 25, insert the following section:

"Section 7. REPORTING REQUIREMENT. --

A. A certified school administrator shall report to the department of education known criminal convictions of criminal sexual penetration pursuant to Section 30-9-11 NMSA 1978, abuse of a child pursuant to Subsection C of Section 30-6-1 NMSA 1978 or sexual contact of a minor pursuant to Section 30-9-13 NMSA 1978 of an employee or applicant.

B. The state board may suspend or revoke a certificate held by a certified school administrator who fails to report a known criminal conviction of criminal sexual penetration pursuant

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Page 10

1
2 to Section 30-9-11 NMSA 1978, abuse of a child pursuant to
3 Subsection C of Section 30-6-1 NMSA 1978 or sexual contact of a
4 minor pursuant to Section 30-9-13 NMSA 1978 of an employee or
5 applicant.

6 C. A certified school administrator who makes a good
7 faith report of a known criminal conviction of criminal sexual
8 penetration pursuant to Section 30-9-11 NMSA 1978, abuse of a
9 child pursuant to Subsection C of Section 30-6-1 NMSA 1978 or
10 sexual contact of a minor pursuant to Section 30-9-13 NMSA 1978 of
11 an employee or applicant shall not be held liable for civil
12 damages as a result of the report."

13 14. Renumber the succeeding sections accordingly.

14
15 15. On page 6, lines 5 and 6, strike "One hundred thousand
16 dollars (\$100,000)" and insert in lieu thereof "Sixty thousand
17 dollars (\$60,000)".

18
19 16. On page 6, line 10, after "shall" insert "not".

20
21 17. On page 6, between lines 10 and 11, insert the following
22 section:

23 "Section 9. APPROPRIATION.--Sixty thousand dollars (\$60,000)
24 is appropriated from the general fund to the department of public
25 safety for expenditure in fiscal year 1998 for the purpose of
implementing the educator background check program. Any

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unexpended or unencumbered balance remaining at the end of fiscal
year 1998 shall revert to the general fund."

18. Renumber the succeeding section accordingly.,

and thence referred to the APPROPRIATIONS AND FINANCE
COMMITTEE.

Respectfully submitted,

Samuel F. Vigil, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

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The roll call vote was 7 For 3 Against

Yes: 7

No: Beam, Trujillo, S.M Williams

Excused: Nicely, Weeks, W.C. Williams

Absent: None

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State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 18, 1997

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7 Mr. Speaker:

8 Your APPROPRIATIONS AND FINANCE COMMITTEE, to
9 whom has been referred

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11 HOUSE BILL 873, as amended

12
13 has had it under consideration and reports same with
14 recommendation that it DO PASS, amended as follows:

15 1. On page 2, line 16, before the period insert "but does
16 not include the parent of a child enrolled in the school where the
17 volunteer child care services are being provided".

18
19 2. On page 6, between lines 4 and 5, insert the following
20 new section:

21 "Section 8. A new section of the Public School Code is
22 enacted to read:

23
24 "[NEW MATERIAL] VOLUNTEERS--BACKGROUND CHECKS.--The local
25 school boards shall determine which volunteers must comply with

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FIRST SESSION, 1997

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the provisions of the Educator Background Check Act. "".

3. Renumber the succeeding sections accordingly.

Respectfully submitted,

Max Coll, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

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FIRST SESSION, 1997

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The roll call vote was 12 For 3 Against

Yes: 12

No: Abeyta, Bird, Garcia, M H.

Excused: Heaton, Salazar

Absent: None

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FIRST SESSION, 1997

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FIRST SESSION, 1997

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March 21, 1997

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10 Mr. President:

11

Your FINANCE COMMITTEE, to whom has been referred

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13

HOUSE BILL 873, as amended

14

15 has had it under consideration and reports same with

16 recommendation that it DO PASS.

17

Respectfully submitted,

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Ben D. Altamirano, Chairman

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Adopted _____ Not Adopted _____

FORTY-THIRD LEGISLATURE
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(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Carraro, Eisenstadt, Ingle, Lyons, McKibben

Absent: None

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Underscored material = new
[bracketed material] = delete